

## ZABER'S GENERAL TERMS AND CONDITIONS OF SALE

1. **Applicability, Acceptance of Terms, and Entire Agreement Clause.** All sales by Zaber Technologies Inc. ("Zaber") to any person ("Buyer") of the goods ("Goods") in a Sales Order Confirmation ("Sales Confirmation") are governed by these general terms and conditions of sale ("Terms"). The Terms are the only terms which govern the sale of Goods in the Sales Confirmation. The Sales Confirmation and these Terms (collectively, "Agreement") comprise the entire agreement between the parties, and supersede prior understandings, agreements, negotiations, representations, warranties, and communications, both written and oral. These Terms prevail over Buyer's terms and conditions of purchase. Zaber's fulfillment of Buyer's order does not constitute acceptance of any Buyer's terms and conditions. **THESE TERMS AND CONDITIONS OF SALE ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF SALE BETWEEN ZABER AND BUYER.**
2. **Amendment and Modification.** These Terms may only be modified in writing by an authorized representative of Zaber and Buyer.
3. **Price.**
  - a. Buyer will purchase the Goods from Zaber at the price(s) indicated in Zaber's Sales Confirmation ("Price").
  - b. Buyer is responsible for all taxes, duties, and charges imposed by any governmental authority.
4. **Payment Terms.**
  - a. Buyer will pay all invoiced amounts due to Zaber within 30 days from the date of Zaber's invoice unless otherwise agreed upon in writing by Zaber and Buyer. Buyer will make all payments under these Terms by wire transfer, cheque or money order and in the currency indicated on the invoice. Zaber reserves the right to require alternative payment terms, including without limitation payment in advance.
  - b. Payments by credit card will be made on the invoice date, which is usually the date of shipment. Buyer will pay an additional 2% of the invoice amount for payments by credit card made after the invoice date. Late payment charges defined in 4.c. also apply to late credit card payments.
  - c. Buyer will pay interest on all late payments at the lesser of 1.5% per month or the maximum rate permitted by law. Buyer will reimburse Zaber for all reasonable costs for collecting any late payments, including Zaber's legal fees.
  - d. Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Zaber, whether relating to Zaber's breach, bankruptcy, or otherwise.

5. **Collateral and Security.** As collateral security for the payment of the Price, Buyer grants Zaber a lien on and security interest in all the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time. Buyer also grants Zaber a lien on and security interest in all accessions and replacements or modifications of all the right, title, and interest of Buyer in, to, and under the Goods, wherever located, whether now existing or hereafter arising or acquired, as well as a lien on and security interest in all proceeds (including insurance proceeds) arising from the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired. The security interest granted under this provision constitutes a purchase money security interest under the *British Columbia Personal Property Security Act*.
6. **Delivery.** All delivery times are only estimates. Zaber is not liable for any delay in delivery of Buyer's purchase order ("Order") and does not assume any liability in connection with the shipment.
- a. Unless otherwise agreed in writing by Zaber and Buyer, Zaber will deliver the Goods to the Buyer's requested location ("Delivery Point") using Zaber's standard methods for packaging and shipping such Goods.
  - b. When agreed to by Zaber and Buyer, Zaber may make partial shipments of Goods to Buyer. Each shipment is a separate sale and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's Order.
  - c. If Buyer fails to accept delivery of any of the Goods or if Zaber is unable to deliver the Goods at the Delivery Point because Buyer has not provided appropriate instructions, documents, licenses, or authorizations: (i) risk of loss to the Goods passes to Buyer; (ii) the Goods are deemed delivered; and (iii) Zaber, at its option, may store the Goods until Buyer takes possession and Buyer will pay for related costs and expenses (including, storage and insurance).
7. **Non-Delivery.**
- a. The quantity of Goods as recorded by Zaber on dispatch from Zaber's place of business will be considered the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence to the contrary.
  - b. Zaber is not liable for any non-delivery of Goods (even if caused by Zaber's negligence) unless Buyer gives written notice to Zaber of the non-delivery within 30 calendar days of delivery.
  - c. Any liability of Zaber for non-delivery of the Goods is limited to the value of the missing Goods.
8. **Shipping Terms.** Zaber will deliver the Goods in accordance with the shipping terms on the Sales Confirmation. Shipping terms will be [Free Carrier (FCA) or Ex Works (EXW)].

9. **Inspection of Non-Conforming Goods.**

- a. "Non-Conforming Goods" means only the following: (i) product shipped is different than identified in the packing list; (ii) product's label or packaging incorrectly identifies its contents; or (iii) Goods are used or damaged such that they are unsuitable for retail sale and Buyer can provide evidence that such use or damage was caused prior to delivery through no fault, act, or omission of Buyer or its agents.
- b. Buyer will inspect the Goods within 30 business days of delivery ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Zaber in writing of any Non-Conforming Goods during the Inspection Period and gives written evidence or other documentation as required by Zaber.
- c. If Buyer notifies Zaber of any Non-Conforming Goods within the Inspection Period, Zaber will, in its discretion: (i) repair such Non-Conforming Goods, (ii) replace such Non-Conforming Goods or (iii) credit or refund the Price paid for such Non-Conforming Goods. If Zaber decides to repair or replace Non-Conforming Goods, Buyer will ship, at Buyer's expense and risk of loss, the Non-Conforming Goods back to the Delivery Point. Zaber will, after receiving Buyer's shipment of Non-Conforming Goods, make the replaced Goods available at the Delivery Point.

10. **Title and Risk of Loss.** Risk of loss, including damage and theft, will pass to Buyer when Goods leave Zaber's premises. Title will pass to Buyer upon Zaber's receipt of full payment for Goods from Buyer.

11. **Limited Warranty.**

- a. **ZABER'S WARRANTY TO BUYER:** Zaber warrants to Buyer that all Goods will conform to the published specifications and be free from defects in material and workmanship for a period of 12 months from the date of shipment of the Goods ("Warranty Period").
- b. Zaber is not liable for a breach of the Warranty unless: (i) Buyer gives written notice of the defect, reasonably described, to Zaber within 30 calendar days of the time when Buyer discovers or ought to have discovered the defect ("Warranty Notice"); (ii) Zaber is given a reasonable opportunity after receiving the Warranty Notice to examine such Goods and Buyer, and if requested to do so by Zaber, returns such Goods to Zaber's place of business at Buyer's cost for examination; and (iii) Zaber reasonably verifies Buyer's claim that the Goods are defective.
- c. Zaber is not liable for a breach of the Warranty if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Zaber's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Zaber.

- d. **EXCEPT FOR THE WARRANTY IN SECTION 11a, ZABER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**
- e. Subject to Section 11(b) and Section 11(c) above, during the Warranty Period, Zaber will at its sole discretion either: (i) repair or replace the Goods (or the defective part); or (ii) credit or refund the Price of the Goods at the pro rata contract rate provided that, if Zaber requests, Buyer, at Buyer's expense, returns the Goods to Zaber. **THESE REMEDIES ARE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ZABER LIABILITY FOR BREACH OF THE WARRANTY IN SECTION 11a.**

12. **Customized or Bespoke Goods.** Where the Goods have been produced or adapted according to designs or configurations specified or supplied by Buyer, Buyer warrants to Zaber that:

- a. the Goods as designed or configured do not breach any third party's intellectual property rights,
- b. the Goods will be fit for the purpose for which they are designed or configured, and Buyer agrees that Zaber will have no responsibility for any defective design or configuration, and
- c. Buyer has or will have satisfied itself that all necessary tests and examinations have been made or will be made before the goods are brought into use to ensure that the Goods are designed, constructed and operational so as to be safe without the risk to the health or safety of any persons using or near to the Goods.

13. **Limitation of Liability.**

- a. **IN NO EVENT WILL ZABER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b. **IN NO EVENT WILL ZABER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ZABER FOR THE GOODS SOLD UNDER THE AGREEMENT or FIFTY THOUSAND DOLLARS (\$50,000), WHICHEVER IS LESS.**

14. **Force Majeure.** Zaber is not liable or responsible to Buyer, and will not be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Zaber including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.
15. **Waiver.** Zaber's waiver of any of the provisions of the Agreement is not effective unless explicitly made in writing and signed by Zaber. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement operates, or may be construed, as a waiver of the Agreement. No single or partial exercise of any right, remedy, power, or privilege under the Agreement precludes any other or further exercise of the rights, remedies, powers, or privileges under the Agreement or the exercise of any other right, remedy, power, or privilege.
16. **Confidential Information.** All non-public, confidential, or proprietary information of Zaber or Buyer, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer or supplier lists, pricing, discounts or rebates, disclosed by Zaber or Buyer ("Disclosing Party") to the other ("Receiving Party"), whether disclosed orally or in written electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Agreement is confidential, to be used solely for the purpose of performing the Agreement and may not be disclosed or copied by the Receiving Party unless authorized in advance by Disclosing Party in writing. At Disclosing Party's request, Receiving Party will promptly return all documents and other materials received from Disclosing Party. Disclosing Party is entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Receiving Party at the time of disclosure; or (ii) rightfully obtained by Receiving Party on a non-confidential basis from a third party.
17. **Assignment.** Buyer will not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Zaber. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.
18. **No Third Party Beneficiaries.** The Agreement is for the sole benefit of Zaber and Buyer and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under, or by reason of, the Agreement.

19. **Compliance with Law.** Buyer will comply with all applicable laws, regulations, and ordinances. Buyer will maintain all effective licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Agreement. Buyer will comply with all export and import laws of all countries involved in the sale of the Goods under the Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of the Goods requiring any government import clearance.
20. **Relationship between Zaber and Buyer.** The relationship between Zaber and Buyer is that of independent contractors. Nothing contained in the Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.
21. **Termination.** In addition to any remedies that may be provided under these Terms, on written notice to Buyer, Zaber may terminate the Agreement with immediate effect, if Buyer: (i) fails to pay any amount when due under the Agreement and this failure continues for 90 days after Buyer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or otherwise is subject to proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
22. **Governing Law.** Buyer acknowledges and agrees the Agreement is governed by and construed in accordance with the laws of the Province of British Columbia ("BC") without giving effect to any choice or conflict of law rule (whether BC or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of BC.
23. **United Nations Convention.** Buyer agrees the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.
24. **Choice of Forum.** Buyer agrees any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to the Agreement, including all exhibits, schedules, attachments, and appendices attached to the Agreement, and all contemplated transactions, will be brought in the courts of BC. Zaber and Buyer irrevocably submit to the exclusive jurisdiction of the BC courts in any such suit, action, litigation, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Zaber and Buyer agree that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Zaber and Buyer irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any court that any action or proceeding brought in that court has been brought in an inconvenient forum.
25. **Severability and Invalidity.** If any term or provision of the Agreement is invalid, illegal, or unenforceable, that portion of the Agreement is severable from the Agreement and does not affect the enforceability of other provisions.

26. **Survival.** Provisions of these Terms which by their nature should apply beyond the term of the Agreement remain in force after any termination or expiration of the Agreement including without limitation: Insurance, Compliance with Laws, Confidential Information, Governing Law, Choice of Forum, and Survival.
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